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District of New Jersey

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
Caption in compliance with D.N.J. LBR 9004-1(b)

GIBBONS P.C.

Karen A. Giannelli, Esq.
Mark B. Conlan, Esq.
Brett S. Theisen, Esq.
One Gateway Center
Newark, New Jersey 07102
Telephone: (973) 596-4500
Facsimile: (973) 596-0545
E-mail: kgiannelli@gibbonslaw.com
mconlan@gibbonslaw.com
btheisen@gibbonslaw.com

*Counsel to the Debtors
and Debtors-in-Possession*

In re:

NEW ENGLAND MOTOR FREIGHT, INC.,
et al.,

Debtors.¹

Chapter 11

Case No. 19-12809 (JKS)

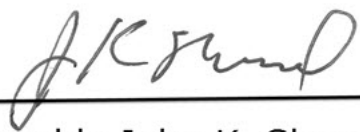
(Jointly Administered)

CONSENT ORDER

This consent order (the “Consent Order”) is made by and among Fifth Third Bank (“Fifth Third”), the above-captioned debtors-in-possession (collectively, the “Debtors”), and the Official Committee of Unsecured Creditors appointed in the above-captioned chapter 11 cases (the “Committee” and, together with Fifth Third and the Debtors, the “Parties”).

DATED: October 10, 2019

¹ The Debtors in these chapter 11 cases and the last four follows: New England Motor Freight, Inc. (7697); Eas (2777); Apex Logistics, Inc. (5347); Jans Leasing Corp MyJon, LLC (7305); Hollywood Avenue Solar, LLC (22 LLC (4666).


Honorable John K. Sherwood
United States Bankruptcy Court

RECITALS

WHEREAS, on February 11, 2019 (the “Petition Date”), each of the above-captioned Debtors filed a voluntary petition for relief under chapter 11, title 11, United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”), thereby initiating the above-captioned chapter 11 cases (the “Chapter 11 Cases”). The Debtors, as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, are engaged in an orderly liquidation of their assets and wind-down of their businesses, toward the goal of preserving and maximizing the value of their assets for all creditors; and

WHEREAS, on or about February 25, 2019, the Office of the United States Trustee appointed the Committee; and

WHEREAS, on April 8, 2019, the Court entered the NEMF Auction Sale Order, which authorized the sale of Debtor New England Motor Freight’s (“NEMF”) “Equipment” (as defined in the NEMF Auction Sale Order) pursuant to an Engagement Agreement between the Debtors and T&M; and the Court having subsequently entered an Order in aid of the NEMF Auction Sale Order [Dkt. No. 629], which expanded the scope of the auctions by authorizing the sale of additional Equipment owned by Debtors other than NEMF; and

WHEREAS, from approximately late May 2019 through mid-July 2019, T&M sold the Equipment through auctions conducted at various locations (the “Auctions”); and

WHEREAS, certain Equipment and/or other property of the Debtors’ estates, specifically identified as (1) 2016 FORD Vin# 3FA6P0HD3GR162671; (2) 2017 CHEVY MALIBU Vin# 1G1ZC5ST0HF266638; and (3) 2017 FORD FUSION Vin# 3FA6P0H78HR338870 (collectively, the “Collateral”), was not sold in the Auctions for various reasons including, upon information and

belief, due to the Collateral (company cars) being used by certain of the Debtors' employees; and

WHEREAS, the Collateral consists of three (3) company cars in which Fifth Third has a perfected security interest; and

WHEREAS, buyers for some or all of the Collateral are in the process of being identified, and the Parties now desire for the Collateral to be released to Fifth Third and to be sold by Fifth Third through a private sale with the cooperation and assistance of the Debtors and/or T&M, to the extent necessary and desirable by the Parties (but without cost to Fifth Third unless specifically agreed to in writing between and/or among the parties); and

WHEREAS, the Parties having engaged in settlement discussions and now desire to terminate the automatic stay as to the Collateral as provided in this Consent Order.

NOW, THEREFORE, the Parties agree as follows:

1. The foregoing recitals are incorporated herein by reference.
2. The automatic stay is hereby terminated as set forth herein pursuant to Section 362(d) of the Bankruptcy Code as to the Collateral.
3. Fifth Third shall be authorized to take immediate possession and control of the Collateral and liquidate the Collateral through commercially reasonable means and consistent with all applicable laws. The Debtors are authorized to provide cooperation and assistance to Fifth Third as may be reasonably requested without cost to Fifth Third unless specifically agreed to in writing between and/or among the Parties. In the event the Debtors or their agents are in possession or control of the titles to any item of the Collateral, they shall deliver same to counsel for Fifth Third within three (3) business days of entry of this order. After all of the Collateral has been sold, Fifth Third shall provide the Debtors and the Committee with a report of the sale results as soon as reasonably practicable. To the extent the sale(s) conducted by Fifth Third result in net proceeds

greater than Fifth Third's liens, all of the Debtors' and the Committee's rights with respect to those proceeds are hereby preserved.

4. This Consent Order may not be amended without the express written consent of all Parties hereto and entry by the Bankruptcy Court of an amended order approving same.

5. This Consent Order shall be binding upon the Parties hereto and upon all of their affiliates, assigns and successors, including without limitation any bankruptcy trustee that might be appointed in the future.

6. The Bankruptcy Court will retain jurisdiction over all matters related to this Consent Order.

IN WITNESS WHEREOF, the Parties hereto have executed this Consent Order as of the date and year first written below and each such Party consents to the form and manner of this Consent Order.

Dated: October 10, 2019

GIBBONS P.C.

By: /s/ Brett S. Theisen
Brett S. Theisen

One Gateway Center
Newark, NJ 07102-5310
Tel: (973) 596-4500
E-mail: btheisen@gibbonslaw.com

*Counsel to the Debtors
and Debtors-in-Possession*

Dated: October 10, 2019

REED SMITH LLP

By: /s/ Christopher A. Lynch
Christopher A. Lynch

599 Lexington Avenue, 22nd Floor
New York, NY 10022
Tel: (212) 521-5400
E-mail: clynch@reedsmith.com

Counsel to Fifth Third Bank

Dated: October 10, 2019

LOWENSTEIN SANDLER LLP

By: /s/ Joseph J. DiPasquale
Joseph J. DiPasquale

One Lowenstein Drive
Roseland, NJ 07068
Telephone: (973) 597-2500
E-mail: jdipasquale@lowenstein.com

-and-

ELLIOT GREENLEAF, P.C.
1105 Market Street, Suite 1700
Wilmington, DE 19801
Phone: (302) 384-9400

Counsel to the Official Committee of Unsecured Creditors